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RALPH DOCKSEY,
Gent. Son and Heir
of Robert Docksey,
Gent. Deceased. } APPELL.

ELIZABETH DOCKSEY, Wi-
dow, and Executrix of the
said Robert Docksey. } RESP.

The Respondent's.

THE said Robert Docksey, a Confectioner in London, having but a small Fortune; in 1662, Inter-married with the Respondent, with whom he had about 14 or 1500 l. Portion, and afterwards improving his Estate, he purchased the Manor of Snelston, and other Lands in the Counties of Derby and Stafford, of about 700 l. per Ann. And the said Robert having Issue, the Appellant, his Eldest Son, and Five younger Children; upon a Treaty of Marriage between the Appellant and Elizabeth his intended Wife, and in Consideration of the Marriage and Portion, by Articles agreed to settle the Capital Messuage and Lands in Snelston of 200 l. per Ann. Value on the Appellant and his intended Wife, and their Issue, which was afterwards accordingly Settled by Lease and Release of 19 and 20 April, 1698, and the Marriage took Effect.

Articles.
22 Aug. 4 Willi
& Mar. 1692.

Robert's former
Will, dated
9 June 1703.

The said Robert Docksey made a Will, whereby he gave the Respondent all his Plate, Jewels, and Household-Goods for her Life, and after to dispose of the same to such of his Children and Grand-Children as she should think fit; and gave her 20 l. to be paid her within a Month after his Decease; and Devised all his Real and Personal Estate to his Son Robert Docksey, and Son in Law Francis Evans (whom he made Executors) upon Trust to pay his Debts, and several Legacies to his Daughters and Grand-Children; and Devised to the Respondent several Closes in Snelston for her Life, for her Jointure; and also a Rent-charge of 90 l. per Ann. for her Life, for her better Support and Maintenance out of all his Estate, after his Debts and Legacies paid; and Devis'd the Surplus of his Real Estate, after his Debts and Legacies paid, to his Son Robert, and his Heirs.

In Apr. 1704.

The Testator being ill of the Sickness (whereof he afterwards died) the Appellant went to one Mr. Pole, a Clergyman, and particular Acquaintance of the Testator's, to desire him to persuade his Father the Testator to make his Will; whereupon Mr. Pole having heard that the Testator had by a former Will Devised the Surplus of his Estate to his Son Robert, and his Heirs, he endeavour'd to persuade the Testator to alter it, and to give his Estate to the Appellant, and charge it with what Money he saw good to his Son Robert, and gave him several Reasons for it; whereupon the Testator seem'd inclinable to alter his Will, but was utterly averse to leave his Estate to the Appellant; so that Mr. Pole went away, and on the Monday following Mr. Pole came again and found the Testator much worse than before, and again repeated his Arguments for the Testator's making his Will, whereto he seem'd inclinable, and then told Mr. Pole his Intention of giving his whole Estate to the Respondent, his Wife, to pay his Debts and Legacies, and to dispose of the Remainder as she saw good (as he had done by Two former Wills, One dated March 6. 1692, and the other 22 November, 1697.) but said, tho' he left it in his Wife's Power, yet he would have her to leave the Estate to his Son Robert, and not to give the Appellant any Part of it: And thereupon

On 24 April
1704.

upon one Mr. Hayne was sent for, and came thither that Evening, and took Instructions for drawing the Will, and then went into another Room and drew the same, and when it was read, over to the Testator, viz.

The said Testator executed the said Will, being his last Will, whereby he *Devised to the Appellant, and his Heirs, all the Land call'd Snelston Park, with all the Wood thereon, with the Appurtenances, (except one Corner thereof in the Will particularly describ'd) the Appellant and his Heirs paying the Respondent 1000 l. within Four Years next after the Testator's Decease, and the Respondent thereout to give 100 l. to the Appellant's Eldest Daughter, if then Living, but if Dead, among the rest of his Children as she should think fit: All the rest of his Real Estate, not before Devised, he gave to the Respondent and her Heirs, upon the Trusts hereafter-mention'd. And whereas the Testator had then some Time since agreed with his Son (the Appellant) for the exchange of some Lands between them for Conveniency of both their Estates, viz. That the Testator should Convey the Capital Messuage, wherein he then liv'd, and Lands next and most convenient to it of 100 l. per Ann. Value and upwards, in exchange for Lands of the same Yearly Value, which the Testator had formerly Settled on the Appellant on his Marriage; therefore for the Performance of that Agreement, he Devised the said Capital Messuage and Lands of 100 l. per Ann. Value, and upwards, to be set out as to the Quantity and Conveniency by Two Persons in the Will named, unto the Respondent and her Heirs, in Trust, to Convey the same to the like Uses, as the Lands which the Appellant should Convey to the Respondent and her Heirs, in lieu thereof are Settled. But the Respondent was to have the Capital Messuage for her Life, if she desired the same. Then as for the Residue of his Real Estate (except one Close Devised to a Charity) and the Lands which the Respondent was to have in exchange from the Appellant, the Testator Devised the same to the Respondent and her Heirs, in Trust, to sell the same, or so much thereof as should be needful for Payment of his Debts and Legacies, and gave other Legacies to other Persons, and gave all the Personal Estate to the Respondent, towards the Payments of his Debts and Legacies and made the Respondent Executrix*

20 May 1704. The Testator died, and shortly after Mr. Hayne who drew the Will, wrote to Robert, the Son, Two several Letters, wherein he acquaints Robert with the Contents of his Father's Will, viz.

The first Letter dated 19 Aug. 1704. Wherein he writes, That the Respondent had all the Estate the Testator died seized or possessed of at her own dispose, paying his Debts and Legacies. He writes, (among other Particulars of the Will) That the Testator had given the Respondent all his Lands and Estate both Real and Personal, paying his Debts and Legacies, and left the Respondent Executrix.

15 & 16, 17 & 18 Aug. 1704. By several Indentures of Lease and Release, mutual Exchanges were made between the Appellant and Respondent, pursuant to the Testator's Will, and the Respondent is in those Conveyances mention'd to be the sole Executrix, and Devisee of the Testator, by which Exchange the Appellant gain'd 1000 l. And

9 & 10 Sept. 1704. By Lease and Release the Appellant made a Purchase of several Lands and Premises in Snelston from the Respondent, as under the Will, of about 187 l. per Ann. Value.

In Hill. Term 1705. The Appellant Exhibited his Bill in Chancery against the Respondent for an Account of the Testator's Real and Personal Estate, and for a Conveyance thereof, pretending, that by the Testator's last Will, the Respondent was only a Trustee for the Appellant after Debts and Legacies Paid.

And

And afterwards the *Respondent* brought her Cross-Bill for Preservation of the Testimony of the Witnesses touching the Will, and for the *Respondent's* quiet Enjoyment of the Estate.

10 Feb. 1707. Both Causes were heard together before the late Lord *Chancellor*, when upon reading the several Wills and Proofs in the Causes, his Lordship declar'd, That there was not a Resulting or ImPLY'd Trust in the Wife and Executrix (the *Respondent*) for the Benefit of the Heir. But on the contrary it appear'd by the written Words of the Will, as also by the Proofs, that such an Implication was strongly contradicted; and that it was the Intention of the Testator, that this should be a beneficial Devise to the Wife and Executrix, and therefore saw no Cause to give the Appellant any Relief, and Order'd, That the Appellant's Bill should stand Dismiss'd without Costs. But on the Respondent's Bill decreed, That she should Hold and Enjoy the Lands Devise'd, subject to the Trusts in the Testator's Will against the Appellant, and all claiming under him.

Which Decree and Dismission it is humbly conceived was well grounded upon the Proofs and Circumstances of the Case, and according to the Rules of Equity.

Reasons why the Testator did not intend to give the Appellant the Surplus of his Estate.

- I. From the Words of the Testator's former Wills, by all which it appears, he had otherwise disposed of the Surplus of his Estate.
- II. From the Devise in the Will in Question of *Snelston Park* to the Appellant and his Heirs, he paying the Respondent 1000 l. within Four Years after his Death, and his Intentions in this and his former Wills; for had the Testator intended the Appellant the Surplus, there would have been no Occasion for making this Devise to him; for the same would have been part of such Surplus, and must have come to him; and then the Respondent would have had nothing to have liv'd upon for Four Years after the Testator's Death.
- III. From the Exchange directed by the Will in Question to be made between the Appellant and Respondent; for had the Surplus been intended for the Appellant, the exchange of the Land, devise'd to the Respondent for that Purpose, would have been a vain and unnecessary Thing; for then the same Lands would have also come to the Appellant without any such Exchange: But the Value, Place and Conveniency mention'd in the Will shews (as conceiv'd) the Testator's Intention to be quite the contrary.
- IV. From Mr. *Pole's* Discourse with the Testator about altering his Will.
- V. From Mr. *Haynes's* Two Letters (who drew the Will) immediately after the Testator's Death, how he then took the Will to be.
- VI. From the Appellant's acquiescence under the Will, in making the Exchange, pursuant to it.

Wherefore and for divers other Reasons, It is most humbly hoped, that the said Dismission and Decree shall be affirmed, and that the Appeal shall be dismissed with Costs.

RO. RAYMOND.
J. PRATT.

RALPH DOCKSEY, Gent. }
Son and Heir of Robert } APPELL
Docksey, Gent. Deceased. }

ELIZABETH DOCKSEY, }
Widow, and Executrix of } RESP
the said Robert Docksey. }

The Respondent's CASE.

To be heard at the Bar of the House of
Lords, on Tuesday the 13th Day
of February, 1710.